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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1368

CONSOLIDATED CARRIERS CORP., and/or
TRUCKING PERSONNEL, INC.,

Petitioners,

vs.

CLOAK DRESS DRIVERS AND HELPERS UNION LOCAL 102, INTERNATIONAL LADIES' GARMENT WORKERS' UNION,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITIONERS' REPLY BRIEF

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I

Pursuant to Rule 24(4) of the Rules of the Supreme Court of the United States, Petitioners submit this reply to the Respondent's Memorandum in Opposition to Granting the Writ of Certiorari ("Memorandum").

Respondent's claim (*p. 2 of Memorandum*) that there is "no viable reason" for allegedly abandoning the so-called rule of *Carey* v. *Westinghouse Electric Corp.*, 375 U.S. 261 (1964) is wrong on two counts: this Honorable Court has not enunciated a rule squarely dealing with the applicability of arbitration to a pure representation issue and, second, the General Counsel, in his 1979 first quarterly report, has now concluded a union violates Section 8(b)(a)(1)(A), (2) and (3) of the Labor-Management Relations Act of 1947, as amended ("Act") when it seeks to arbitrate an issue of representation "notwithstanding [a] colorable contract right upon which its demand for arbitration may have been premised".

II

Respondent is not arbitrating an abstract issue of an alleged evasion of a labor contract (*p. 2 of Memorandum*) but a claim that Trucking Personnel, Inc. ("Trucking") is an affiliate of Consolidated Carriers Corp. ("Consolidated") and, accordingly, the former's employees are represented by Respondent. But this is the precise issue involved in a certification proceeding now pending before the National Labor Relations Board ("Board") to which Respondent and a rival union are parties. Contrary to Respondent's cavalier statement that an election will not be ordered by the Board (*p. 4 of Memorandum*), the "contract bar" defense of Respondent has been rejected at this point.

The issue before the Board, contrary to Respondent's specious claim (*p. 3 of Memorandum*), is not whether "to conduct an election of certain employees of Petitioner", but to determine whether Respondent represents the employees of Trucking and Consolidated, again the very issue which Respondent asks the arbitrator to decide.

To suggest that Respondent may obtain "relief for the past contract violations" (*p. 3 of Memorandum*) is absurd. A predicate for such relief is proof that Respondent represented Trucking's employees and that its labor contract was not restricted to "members only". A decision has already been made that the labor contract applies only to members of Respondent employed by signatories to the identical labor contract upon which Respondent relies in the pending arbitration. This is a decision exclusively for the Board to make, and not for an arbitrator.

Respondent's gloss on the decision by the Regional Director of the Twenty-Seventh Region of the Board and affirmed by the Board (*p. 6 of Memorandum*) is unanswerable because it is incomprehensible.

III

It is egregiously erroneous to suggest that Consolidated seeks to "enjoin the arbitration on the grounds of a pending petition for election filed" with the Board (*p. 3 of Memorandum*). Consolidated seeks to enjoin the arbitration because the issue of representation, which Respondent seeks to disguise by homilies about the arbitration, cannot be resolved by an arbitrator.

Respectfully submitted,

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